



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/173603

PRELIMINARY RECITALS

Pursuant to a petition filed April 07, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General in regard to FoodShare benefits (FS), a hearing was held on June 01, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the undersigned ALJ has jurisdiction to address a 2014 FoodShare (FS) sanction for intentionally violating the program rules when the issue was already decided by a different ALJ in 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Office of the Inspector General
Department of Health Services
1 West Wilson Street
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. In 2014 the agency sent the petitioner a notice stating that they intended to sanction his FoodShare (FS) benefits for 10 years because he had committed an intentional program violation (IPV) of the FS rules by receiving duplicate benefits in two states at the same time. This notice was sent back to the agency as returned mail.
3. In August 2014 ALJ Tedesco conducted an IPV hearing. The petitioner (who was the respondent in the previous appeal) did not appear for that hearing. ALJ Tedesco conducted the hearing in the petitioner's absence. On August 27, 2014 ALJ Tedesco issued a written decision concluding that the agency had shown by clear and convincing evidence that the petitioner had committed an IPV by receiving duplicate benefits in two states at the same time. This written decision was sent to the petitioner at a [REDACTED] mailbox in Kenosha, WI.
4. In March 2015 the petitioner filed a Request for Fair Hearing regarding the IPV. He withdrew that request prior to hearing.
5. The petitioner filed this Request for Fair Hearing on April 11, 2016.

DISCUSSION

Claim preclusion (formerly known as *res judicata*) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as *collateral estoppel*) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

The petitioner had an opportunity to contest the IPV in 2014. He now argues that he was homeless at the time, and did not get his mail. ALJ Tedesco's decision was sent to [REDACTED] mail in Kenosha, WI. [REDACTED] mail is intended for people who do not have a permanent address. The post office collects the person's mail at a post office location convenient to where the person is staying. The person then contacts the post office to set up a time to pick up his or her mail. Even though the petitioner did not get the original notice, he should have gotten ALJ Tedesco's decision. If he did not get ALJ Tedesco's decision it is because he failed to pick up his mail at the post office.

ALJ Tedesco's decision specifically stated:

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent [the petitioner in this appeal] has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear.

The petitioner never asked for a rehearing stating why he had not appeared for the original hearing. There is no dispute that the petitioner knew about his IPV sanction since at least March of 2015 when he requested another Fair Hearing, which he withdrew. There are specific time limits in these FS cases. The petitioner does not get to wait more than one year after knowing about an IPV to request an IPV hearing.

For all of these reasons, I do not have jurisdiction to address the petitioner's claims on the merits. I note that even if I had jurisdiction I would have ruled against the petitioner on the IPV case. The petitioner was under the impression that in order for the agency to prove the IPV, the agency had to have a picture of him using the QUEST cards from both states. This is inaccurate. Each person has a specific four digit pin that a person must enter when using the QUEST or FS card. This issue though is not in front of me as it was already decided by ALJ Tedesco.

CONCLUSIONS OF LAW

I do not have jurisdiction to address a 2014 FoodShare (FS) sanction for intentionally violating the program rules when the issue was already decided by a different ALJ in 2014.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of June, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 3, 2016.

Office of the Inspector General
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